Supreme Court, U.S.
FILED
JAN 31 1996
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No. 95-1069

In The

Supreme Court of the United States

October Term, 1995

HOFFMAN CONTROLS CORPORATION,

Petitioner,

v.

BURGESS-SAIA, INC. AND LANDIS & GYR, INC.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BURGESS-SAIA, INC.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether Petitioner has waived its claims against Burgess-SAIA, Inc. by failing to raise any questions contesting the application of *res judicata* to bar its claims against Burgess-SAIA, Inc.

PARTIES

The parties to the proceeding in the United States Court of Appeals for the Fifth Circuit were:

Hoffman Controls Corporation – Petitioner

Landis & Gyr, Inc. – Respondent

Burgess-SAIA, Inc. – Respondent

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JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Hoffman Controls Corporation ("Hoffman") designs and manufactures mechanical controls, primarily for heating and air conditioning systems. Burgess-SAIA, Inc. ("Burgess-SAIA") is a supplier of motor gearbox assemblies. Throughout the 1980's, Hoffman purchased motor gearbox assemblies from Landis & Gyr, Inc. ("Landis & Gyr"), and later from Burgess-SAIA, for use in Hoffman's mechanical controls.

On July 18, 1991, Hoffman filed suit against Burgess-SAIA, but not Landis & Gyr, in the 44th Judicial District Court of Dallas County, Texas; Cause No. 91-8513-B (the "State Court Action"). Hoffman alleged that motor gearbox assemblies supplied by Burgess-SAIA were failing because they were not capable of maintaining a continuous stalling condition. Specifically, Hoffman alleged that:

> The failure to maintain a continuous stalling condition makes the motor gearbox assemblies, as used in the application of Plaintiff's products, unacceptable, defective, and not within the specifications supplied by Plaintiff in the purchase order and agreement reached with Defendant.

(State Court Action – Plaintiff's Original Petition, ¶ 4.8, Tr. 70). The purchase order was for *both* Ba and F series gearboxes. (Tr. Vol. 5, p. 51). As a result of the alleged

defects in both the Ba and F series, Hoffman sought damages for breach of contract and breach of warranty. (State Court Action – Plaintiff's Original Petition, ¶ 3.1, Tr. 69).

Burgess-SAIA entered general and specific denials of the Plaintiff's Original Petition. In addition, Burgess-SAIA filed a Counterclaim in the State Court Action to recover $10,025 from Hoffman on an unpaid invoice for some of the same motor gearbox assemblies that Hoffman claimed were defective. (State Court Action – Defendant's Counterclaim, Tr. 82-88).

Hoffman did not file a sworn denial to Burgess-SAIA's Counterclaim. Instead, Hoffman "incorporate[d] by reference the allegations Plaintiff made against Defendant in Plaintiff's Original Petition and . . . raise[d] as defenses to Defendant's Counterclaim the causes of action which were alleged by Plaintiff in Plaintiff's Original Petition." (State Court Action – Plaintiff's Original Answer to Defendant's Counterclaim, ¶ III, Tr. 89-91).[1] In other words, the alleged defects in both the Ba and F series were raised as a defense to the Counterclaim in the State Court Action.

The State Court Action was called to trial on October 1, 1992. Following Hoffman's non-suit of its claims pursuant to Rule 162 of the Texas Rules of Civil Procedure, the state court entered Judgment for Burgess-SAIA on its

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[1] Although Hoffman represents to this Court that it did not contest Burgess-SAIA's claim for payment (Petition for Writ of Certiorari, p. 4), the record is clear that the claim was contested in the State Court Action. Indeed, Hoffman has never paid the invoice it now claims it does not contest.

Counterclaim for affirmative relief for $10,025, plus pre-judgment and post-judgment interest. (State Court Action – Judgment, Tr. 92-93).

The state court subsequently entered Findings of Fact and Conclusions of Law. (State Court Action – Findings and Conclusions, Tr. 94-96). The state court found, in significant part, that Burgess-SAIA's Counterclaim was founded upon an open account pursuant to Rule 185 of the Texas Rules of Civil Procedure for goods, wares and merchandise; that Hoffman did not timely file a written denial of the sworn account under oath; and that Burgess-SAIA's Counterclaim was actually litigated and finally adjudicated on the pleadings. (Findings and Conclusions, ¶¶ 4-6, Tr. 95).

Hoffman subsequently appealed the state court judgment. The parties submitted their appellate briefs and argued before the Texas Court of Appeals on October 26, 1993. While Hoffman's appeal of the State Court Action was still pending, Hoffman brought suit in the United States District Court for the Northern District of Texas ("the District Court") against both Burgess-SAIA and Landis & Gyr asserting claims relating to alleged defects in the motor gearbox assemblies. (Plaintiff's Original Complaint, Tr. 1-20).

Burgess-SAIA moved for a conditional summary judgment and stay in the federal action on the basis that the original state court judgment was *res judicata* to Hoffman's claims in the federal action. On August 2, 1993, the District Court stayed the proceedings pending a final resolution of Hoffman's appeal of the State Court Action. The District Court also determined that the doctrine of *res*

judicata would apply to bar Hoffman's entire federal court action if the original state court action was affirmed on appeal. (Memorandum Opinion and Order, Tr. 202-209).[2]

The District Court's Order was reversed and remanded by the Fifth Circuit on April 15, 1994. (Tr. 297-304). The Court of Appeals instructed the District Court to:

> . . . [m]ore carefully and specifically examine how – if at all – transactions spanning over many years and involving different series of gearbox assemblies are so related as to constitute the same transaction for *res judicata* purposes.

(Tr. 304).

As a consequence, Burgess-SAIA filed its second Motion for Summary Judgment on June 30, 1994 to satisfy the instructions of the Fifth Circuit. (Tr. Vol. 5).[3] After careful consideration, the District Court granted Burgess-SAIA's second Motion for Summary Judgment on November 10, 1994. The District Court's Memorandum Opinion and Order specifically addressed the concerns of the Fifth Circuit by demonstrating that the dealings

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[2] The state court judgment in favor of Burgess-SAIA was later affirmed on appeal by the Texas Court of Appeals. (Tr. 213-225). On December 8, 1994, the Texas Supreme Court denied Hoffman's Petition for Writ of Error.

[3] Contrary to Petitioner's claim, (Petition for Writ of Certiorari, p. 4, n.5) *both* Landis & Gyr *and* Burgess-SAIA moved for summary judgment based on the statute of limitations. (Tr. 309). The District Court did not reach those motions. (Tr. 716).

between Hoffman and Burgess-SAIA constituted a single transaction for *res judicata* purposes. As a result, the District Court entered a final judgment in favor of Burgess-SAIA.[4] (Tr. 717). Hoffman then perfected its second appeal to the Fifth Circuit.

After briefing and oral argument, a panel of the Fifth Circuit affirmed the judgment of the District Court in favor of Burgess-SAIA and Landis & Gyr on October 2, 1995. Hoffman's Petition for Rehearing and Suggestion for Rehearing En Banc was denied as untimely. As a result, Hoffman filed its Petition for Writ of Certiorari on December 29, 1995.

REASONS FOR DENYING THE WRIT OF CERTIORARI

1. Hoffman Has Not Challenged the Judgment in Favor of Burgess-SAIA.

The questions presented by Hoffman's Petition for Writ of Certiorari challenge the lower courts' determination that Landis & Gyr was in privity with Burgess-SAIA for *res judicata* purposes. Hoffman never contests the application of *res judicata* as a bar to its claims against

[4] Judgment was also entered in favor of Landis & Gyr on the theory that although Landis & Gyr was not a party to the State Court Action, it was in privity with Burgess-SAIA for purposes of *res judicata*. Hoffman did not contest Landis & Gyr's privity claim at the District Court level.

Burgess-SAIA, however.[5] Instead, Hoffman simply claims: (a) that Landis & Gyr failed to discharge its initial burden under Rule 56 of the Federal Rules of Civil Procedure; (b) that Hoffman was not required to contest Landis & Gyr's claim of privity at the District Court level; and (c) that Landis & Gyr failed to establish *res judicata* privity as a matter of law. (Petition for Writ of Certiorari, p. i). Consequently, there is nothing to review in connection with the claims against Burgess-SAIA.

Hoffman's failure to present any questions concerning the judgment in favor of Burgess-SAIA waives those claims. Only issues raised by the Petition for Certiorari are typically considered by this Court. *Phillips Chemical Co. v. Dumas Indep. School Dist.*, 361 U.S. 376, 386 n.12, 80 S. Ct. 474, 481 (1960). Consequently, there can be no challenge to the application of *res judicata* to the claims against Burgess-SAIA.

2. There is No Compelling Reason to Grant Certiorari.

Hoffman does not state any compelling reasons supporting the grant of certiorari in this case. Hoffman simply disagrees with the Fifth Circuit's application of well-settled principles to the unusual facts of its case. The

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[5] Although it is apparent from the face of the Petition that Hoffman no longer has an interest in pursuing its claim against Burgess-SAIA, Hoffman has failed to clearly notify the Court, pursuant to Rule 12(6) of the Rules of the Supreme Court of the United States, that Burgess-SAIA does not have an interest in the outcome of the Petition. Consequently, Burgess-SAIA has filed this brief.

Court should not invest its limited resources on such a case.

To begin with, *res judicata* is a well-settled principle of Texas law that does not require the time of this Court. *Texas Water Rights Comm'n v. Crow Ironworks*, 582 S.W.2d 768 (Tex. 1979). Hoffman does not contest the rule of law or its operation as a complete defense in this case.

Similarly, although Hoffman may contest the application of the facts of this case to Landis & Gyr's legal arguments, it does not seriously contest the principle that *res judicata* is available both to parties to the State Court Action and those in privity with them. *Id.* Although Hoffman now claims that Landis & Gyr did not make the required factual showing of privity, Hoffman failed to raise the privity issue in the District Court. Failure to raise this issue at the District Court bars Hoffman from raising the issue on appeal. *Noritake Co. v. M/V Hellenic Champion*, 627 F.2d 724, 732 (5th Cir. 1980).

Finally, the Rule 56 issues raised by Hoffman have been well-settled since 1986. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986); *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S. Ct. 1348 (1986). There is no benefit to revisiting those standards, particularly in a case with the unusual procedural history of this one.

CONCLUSION

Certiorari should be denied. In the alternative, Hoffman should not be permitted to pursue any claims against Burgess-SAIA in light of the absence of any issues raised in the Petition for Writ of Certiorari that contest Burgess-SAIA's judgment.

Respectfully submitted,

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